

***[Note by Christopher Avery: The letter below was sent via Fedex to Bayer headquarters on 23 January 2018, and a copy was sent by email to various Bayer press and communications managers in the USA and Germany. As of 19 February 2018, Bayer had not responded to this letter. Bayer had continued advertising on the Sean Hannity Show.]***

**Christopher Avery**

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To:

- Werner Baumann, CEO, Bayer  
- Werner Wenning, Chairman of the supervisory board, Bayer  
Bayer AG, Kaiser-Wilhelm-Allee 1, 51373 Leverkusen, Germany

From:

Christopher Avery  
Former Director (2002-2013) and founder, Business & Human Rights Resource Centre  
Former Legal Adviser and Deputy Head of Research, Amnesty International, International Secretariat

23 January 2018

Dear Mr. Baumann and Mr. Wenning,

I congratulate Bayer on having adopted a human rights policy that affirms the company's support of the Universal Declaration of Human Rights and the United Nations Guiding Principles on Business and Human Rights. I also congratulate Bayer for being a Founding Member of the United Nations Global Compact.

I am writing today in order to express my concern, shared by others, that by financially supporting the Sean Hannity Show on Fox News through its advertising, Bayer is failing to respect those and other internationally-recognized human rights standards.

On the following pages I provide a detailed explanation of the basis for this concern, as well as of steps that we would feel a responsibility to take beginning 12 February at the United Nations and elsewhere if Bayer decides to continue advertising on the Sean Hannity Show.

I would welcome the opportunity to discuss these issues with Bayer before 12 February if it wishes to do so, and would welcome a response if Bayer wishes to put forward its perspective. I can be contacted via my email address ([chrisavery777@gmail.com](mailto:chrisavery777@gmail.com)) or mobile phone (+1-505-470-6200).

If Bayer decides by 12 February to discontinue its advertising on the Sean Hannity Show, then the fact that I contacted Bayer, and all of my communications with Bayer including this letter, will remain strictly confidential and private.

Since we have not had the opportunity to meet in the past, at the end of this letter I include my short bio as an annex.

I want to emphasize that I am writing this in my personal capacity – I am retired, and no longer have any connection with Business & Human Rights Resource Centre or with Amnesty International, and my former colleagues at those organizations are not yet aware of this initiative

Sincerely,

Christopher L. Avery

**Contents:**

1. How Bayer is undermining human rights and democratic institutions by continuing to advertise on the Sean Hannity Show
2. The broader U.S. and international context of these human rights concerns
3. Steps that would be taken if Bayer decides to continue advertising on the Sean Hannity Show

ANNEX: Short bio, Christopher Avery

**1. How Bayer is undermining human rights and democratic institutions by continuing to advertise on the Sean Hannity Show**

**A. Bayer lends financial support (via advertising) to Hannity’s repeated attacks on the independent media, Bayer thereby failing to respect:**

- Article 19 of the Universal Declaration of Human Rights
- Article 19 of the International Covenant on Civil and Political Rights
- Principles 11, 12 and 13 of the United Nations Guiding Principles on Business and Human Rights (the corporate responsibility to respect human rights) – see also the Commentary on Principle 17 regarding complicity
- United Nations Global Compact, Principles 1 and 2

An independent press is fundamental to democracy and human rights. In its commentary on Article 19 of the International Covenant on Civil and Political Rights (the right to freedom of opinion and expression), the United Nations Human Rights Committee states:

*“A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.”<sup>1</sup>*

Currently the independent media in the United States is under siege as never before, and Sean Hannity is taking the lead attacking the independent media persistently on his *Fox News* television show. Hannity reportedly criticized the press in 90 percent of his monologues from May 15 to Sep 1 2017, and used the term “*fake news*” 67 times.<sup>2</sup> The attacks continue, for example on 3 January 2018 Sean Hannity on his show called the mainstream media in the United States “*corrupted and morally bankrupt*”. On 17 January 2018 Sean Hannity referred to “*the sick, the twisted, the mentally unstable anti-Trump media*” and said “*these brain-dead so-called journalists they bounce around the*

<sup>1</sup> U.N. Human Rights Committee, General comment No. 34 regarding Article 19 of the International Covenant on Civil and Political Rights (Freedom of opinion and expression), 2011.

<sup>2</sup> David Bauder, “Fox’s Wallace doesn’t like colleagues echoing press attacks”, *Associated Press*, 19 Oct 2017.

same talking points in their little fake news bubble echo chamber...it's like they're hypnotized, lobotomized robots...they are not serving you the American people."<sup>3</sup> Hannity's attacks on the media are reportedly of concern to even his own colleague Chris Wallace at *Fox News*.<sup>4</sup>

The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (appointed by the United Nations Human Rights Council) commented in October 2017:

*"We see a near-term and a long-term impact that is extremely negative on a free press and on freedom of expression generally in the United States. I think if you look across the range of what this administration is doing, whether it's changing the culture of how we think about the media and how we think about information, it has a long-term negative impact on respect for the media which god forbid could lead to attacks on the media – physical attacks which we've seen in the context of rallies that Trump has held. But I think that there is a long-term detrimental impact on respect for first amendment values which are also human rights/freedom of expression values, and I'm really deeply concerned about that."*<sup>5</sup>

On 19 January 2018 a Michigan man was arrested on a charge that he called CNN's Atlanta headquarters and threatened: "Fake news. I'm coming to gun you all down."<sup>6</sup> An article published after this arrest, entitled "Journalists Raise Concerns About 'Fake News' Rhetoric After Man's Arrest for Threats to CNN", reported:

*"A man was arrested for making threats on CNN employees in Atlanta, and his use of the term "fake news" has raised concerns that the derisive and hostile rhetoric aimed at the news media by President Donald Trump and others is raising safety issues for journalists in the United States. "As the rhetoric towards the press emanating from the highest levels of government has grown more hostile, CPJ has received calls from journalists in the U.S. who say that they have received death threats," the Committee to Protect Journalists said in a statement.*

*The CNN incident is one of the latest made on members of the media — in fact, reporters frequently talk about how routine they have become. According to the U.S. Press Freedom Tracker, there were 44 physical attacks on journalists in the United States in 2017, the first year of the database...*

*The Reporters Committee for Freedom of the Press, another journalism organization, said in a statement sent on Twitter on Tuesday that "journalists face verbal and physical threats every day just for doing their job: asking questions that people want answered. There are consequences to the dangerous rhetoric aimed at reporters and it only heightens the threat of violence against them."*

*Elana Beiser, the editorial director of the Committee to Protect Journalists, said the CNN incident was "extremely scary." She said the organization "has long maintained that when leaders use their platforms to vilify the media, they expose journalists to unnecessary risk."*<sup>7</sup>

## **B. Bayer lends financial support (via advertising) to Hannity's repeated calls for the firing of the special prosecutor investigating attempts to subvert the fairness of the 2016 U.S. election, Bayer thereby failing to respect:**

- Article 21 of the Universal Declaration of Human Rights

<sup>3</sup> "They Are Not Serving You': Hannity Rips 'Twisted' Media After Trump's Fake News Awards", *Fox News Insider*, 17 Jan 2018.

<sup>4</sup> David Bauder, "Fox's Wallace doesn't like colleagues echoing press attacks", *Associated Press*, 19 Oct 2017.

<sup>5</sup> United Nations, oral statement by United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 25 Oct 2017.

<sup>6</sup> Alex Johnson, "Michigan man allegedly threatened to gun down CNN employees", *NBC News*, 23 Jan 2018.

<sup>7</sup> Ted Johnson, "Journalists Raise Concerns About 'Fake News' Rhetoric After Man's Arrest for Threats to CNN", *Variety*, 23 Jan 2018.

- Article 25 of the International Covenant on Civil and Political Rights
- Principles 11, 12 and 13 of the United Nations Guiding Principles on Business and Human Rights (relating to the corporate responsibility to respect human rights) - see also the Commentary on Principle 17 regarding complicity
- United Nations Global Compact, Principles 1 and 2

In its commentary on Article 25 of the International Covenant on Civil and Political Rights (the right to free and fair elections), the United Nations Human Rights Committee states in paragraph 19:

*“elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”*<sup>8</sup>

In May 2017 the United States Justice Department appointed Robert S. Mueller III, a former F.B.I. director, as special counsel to investigate Russian interference in the 2016 U.S. elections, including exploring any links or coordination between Donald Trump's 2016 presidential campaign and the Russian Government. So far several members of the Trump campaign and administration have been convicted or indicted as a result of the investigation.

Sean Hannity has called special counsel Mueller a “*disgrace to the American justice system*”, repeatedly said his investigation is “*corrupt*” and abusive, and continues to demand Mueller's firing. Hannity said: “*This is a massive waste of money, and you, the American people, are paying for all of this, which is an attempted political takedown of your duly elected president.*”<sup>9</sup>

A recent *New York Times* editorial entitled “Fox News v. Robert Mueller” (12 December 2017) noted Sean Hannity’s comment that “*Mueller’s stooges literally are doing everything within their power, and then some, to try and remove President Trump from office.*” The *Times* editorial went on to say:

*“The primary purpose of Mr. Mueller’s investigation is not to take down Mr. Trump. It’s to protect America’s national security and the integrity of its elections by determining whether a presidential campaign conspired with a foreign adversary to influence the 2016 election — a proposition that grows more plausible every day....None of these attacks [on Mueller] or insinuations are grounded in good faith. The anti-Mueller brigade cares not a whit about possible bias in the Justice Department or the F.B.I. It simply wants the investigation shut down out of a fear of what it might reveal. But if your man is really innocent, what’s the worry?”*<sup>10</sup>

Randall D. Eliason (Lecturer in Law at George Washington University who spent 12 years as an assistant United States attorney for the District of Columbia), recently wrote an op-ed in the *Washington Post* entitled “The mounting attacks on Mueller are misguided and dangerous”. After referring to attacks by Sean Hannity, the article says:

*“The mounting attacks on Mueller are misguided and dangerous. Those who would seek to undermine this cornerstone of our justice system based on such flimsy evidence should think twice about what they are doing. Norms and institutions are fragile things not easily restored once the public loses confidence in them. Destroying the fundamental norm under which we*

<sup>8</sup> U.N. Human Rights Committee, General comment No. 25 regarding Article 25 of the International Covenant on Civil and Political Rights (Participation in Public Affairs and the Right to Vote), 1996.

<sup>9</sup> Callum Borchers, “Trump gets conflicting advice about firing Mueller from Sean Hannity and ‘Fox & Friends’”, *Washington Post*, 18 Dec 2017.

<sup>10</sup> Editorial Board of New York Times, “Fox News v. Robert Mueller”, *New York Times*, 12 Dec 2017.

*have operated for more than two centuries — that criminal law is not used for political purposes — will send this country to a dark place where we don't want to be.”<sup>11</sup>*

## 2. The broader U.S. and international context of these human rights concerns

In January 2018, two Republican senators spoke out strongly against the increasing attacks on the press taking place in the United States – and they emphasized that such attacks were being imitated in other countries to undermine freedom of the press and human rights.

### A. Speech by Republican Senator Jeff Flake

On 17 January 2018, Republican Senator Jeff Flake took the Senate floor warning of the danger to democracy and human rights around the world posed by those who attack the media and dismiss facts as “fake news”. His statement included the following:

*“2017 was a year...in which an unrelenting daily assault on the constitutionally-protected free press was launched by [the] White House, an assault that is as unprecedented as it is unwarranted. “The enemy of the people,” was what the president of the United States called the free press in 2017...The free press is the despot’s enemy, which makes the free press the guardian of democracy. When a figure in power reflexively calls any press that doesn’t suit him “fake news,” it is that person who should be the figure of suspicion, not the press.*

*According to the International Federation of Journalists, 80 journalists were killed in 2017, and a new report from the Committee to Protect Journalists documents that the number of journalists imprisoned around the world has reached 262, which is a new record. This total includes 21 reporters who are being held on “false news” charges.*

*No longer can we compound attacks on truth with our silent acquiescence. No longer can we turn a blind eye or a deaf ear to these assaults on our institutions.*

*To be very clear, to call the Russia matter a “hoax” – as the president has many times – is a falsehood.*

*The values of free expression and a reverence for the free press have been our global hallmark, for it is our ability to freely air the truth that keeps our government honest and keeps a people free.*

*But a recent report published in our free press should raise an alarm. Reading from the story: “In February...Syrian President Bashar Assad brushed off an Amnesty International report that some 13,000 people had been killed at one of his military prisons by saying, “You can forge anything these days, we are living in a fake news era.”*

*In the Philippines, President Rodrigo Duterte has complained of being “demonized” by “fake news.” Last month, the report continues, with our President, quote “laughing by his side” Duterte called reporters “spies.”*

*In July, Venezuelan President Nicolas Maduro complained to the Russian propaganda outlet, that the world media had “spread lots of false versions, lots of lies” about his country, adding, “This is what we call ‘fake news’ today, isn’t it?”*

*There are more:*

*“A state official in Myanmar recently said, “There is no such thing as Rohingya. It is fake news,” referring to the persecuted ethnic group.*

<sup>11</sup> Randall D. Eliason, “The mounting attacks on Mueller are misguided and dangerous”, *Washington Post*, 10 Dec 2017.

*Leaders in Singapore, a country known for restricting free speech, have promised “fake news” legislation in the new year.”*

*And on and on. This feedback loop is disgraceful, Mr. President. Not only has the past year seen an American president borrow despotic language to refer to the free press, but it seems he has in turn inspired dictators and authoritarians with his own language. This is reprehensible.*

*We are not in a “fake news” era, as Bashar Assad says. We are, rather, in an era in which the authoritarian impulse is reasserting itself, to challenge free people and free societies, everywhere.”<sup>12</sup>*

## **B. Op-ed by Republican Senator John McCain**

Republican Senator John McCain, in an op-ed entitled “Mr. President, stop attacking the press” published in the *Washington Post* on 16 January 2018, commented:

*“President Trump...has threatened to continue his attempt to discredit the free press by bestowing “fake news awards” upon reporters and news outlets whose coverage he disagrees with. Whether Trump knows it or not, these efforts are being closely watched by foreign leaders who are already using his words as cover as they silence and shutter one of the key pillars of democracy.*

*According to the Committee to Protect Journalists, 2017 was one of the most dangerous years to be a journalist. Last year, the organization documented 262 cases of journalists being imprisoned for their work. Reporters around the world face intimidation, threats of violence, harassment, persecution and sometimes even death as governments resort to brutal censorship to silence the truth.*

*The committee’s report revealed a bleak global climate for press freedom, as more governments seek to control access to information and limit freedom of opinion and expression. They do this not only by arresting journalists but also by fostering distrust of media coverage and accusing reporters of undermining national security and pride. Governments dub the press the “enemy of the people,” weaken or eliminate their independence, and exploit the lack of serious scrutiny to encroach on individual liberties and freedoms.*

*This assault on journalism and free speech proceeds apace in places such as Russia, Turkey, China, Egypt, Venezuela and many others. Yet even more troubling is the growing number of attacks on press freedom in traditionally free and open societies, where censorship in the name of national security is becoming more common. Britain passed a surveillance law that experts warn chills free speech, and countries from France to Germany are looking to do the same. In Malta, a prominent journalist was brutally murdered in October after uncovering systemic government corruption. In Poland, an independent news outlet was fined (later rescinded) nearly half a million dollars for broadcasting images of an anti-government protest.*

*Unfortunately, the Trump administration’s attitude toward such behavior has been inconsistent at best and hypocritical at worst. While administration officials often condemn violence against reporters abroad, Trump continues his unrelenting attacks on the integrity of American journalists and news outlets. This has provided cover for repressive regimes to follow suit. The phrase “fake news” — granted legitimacy by an American president — is being used by autocrats to silence reporters, undermine political opponents, stave off media*

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<sup>12</sup> “Flake: Reflexive “Fake News” Claims Not Good For Democracy - Warns against giving license to authoritarian leaders adopting the phrase to justify suppressing free speech abroad”, Senator Jeff Flake, 17 Jan 2018.

*scrutiny and mislead citizens. CPJ documented 21 cases in 2017 in which journalists were jailed on “fake news” charges.*

*Trump’s attempts to undermine the free press also make it more difficult to hold repressive governments accountable. For decades, dissidents and human rights advocates have relied on independent investigations into government corruption to further their fight for freedom. But constant cries of “fake news” undercut this type of reporting and strip activists of one of their most powerful tools of dissent.*

*We can do more to foster conditions in which freedom of expression and information can thrive, including working to change increasingly political attitudes toward journalism... Ultimately, freedom of information is critical for a democracy to succeed... Journalists play a major role in the promotion and protection of democracy and our unalienable rights, and they must be able to do their jobs freely. Only truth and transparency can guarantee freedom.”<sup>13</sup>*

### 3. Steps that would be taken if Bayer decides to continue advertising on the Sean Hannity Show

If Bayer makes a decision to continue advertising on the Sean Hannity Show, I and others would feel a responsibility to call attention to the concerns detailed above, and to Bayer’s failure to abide by its own human rights policy, as well as its failure to respect the United Nations Guiding Principles on Business and Human Rights, the Universal Declaration of Human Rights, and other internationally-recognized human rights standards. The steps we would take would include, but not be limited to, the following:

- A. A complaint about Bayer’s failure to respect the United Nations Guiding Principles on Business and Human Rights and other internationally-recognized human rights standards will be submitted to the **United Nations Working Group on Business and Human Rights** – this will be made public and circulated internationally.
- B. A complaint about Bayer’s failure to respect the principles of the United Nations Global Compact will be submitted to the **Global Compact’s board and the Global Compact CEO/Executive Director** – this will be made public and circulated internationally.
- C. A complaint about Bayer’s failure to respect internationally-recognized human rights standards will be submitted to the **Council of Europe Directorate General Human Rights and Rule of Law** – this will be made public and circulated internationally.
- D. A statement of concerns about Bayer’s failure to respect internationally-recognized human rights standards will be sent to the following organizations, asking them to disseminate the statement widely to their networks and contacts, and to take whatever action they consider appropriate:
  - Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights
  - Mary Robinson, former United Nations High Commissioner for Human Rights
  - Professor John Ruggie, former United Nations Special Representative on Business & Human Rights

<sup>13</sup> Senator John McCain, “Mr. President, stop attacking the press”, in *Washington Post*, 16 Jan 2018.

- **International human rights organizations** including Amnesty International, Human Rights Watch, International Commission of Jurists, Human Rights First, International Federation for Human Rights/Fédération internationale des ligues des droits de l'homme
- **Business and human rights organizations** including Business & Human Rights Resource Centre, Institute for Human Rights and Business, SHIFT, SOMO (Centre for Research on Multinational Corporations), Global Business Initiative on Human Rights
- **Corporate responsibility organizations** including Interfaith Center on Corporate Responsibility, Corporate Accountability International, Ecumenical Council for Corporate Responsibility
- **Organizations that work to protect journalists**, including Reporters Without Borders/Reporters Sans Frontières, Committee to Protect Journalists, Article 19, Freedom of the Press Foundation
- **Journalists** at BBC, Financial Times, Süddeutsche Zeitung, Die Zeit, Der Spiegel, Guardian, New York Times, Washington Post, etc.
- **Socially-responsible investment institutions**, including the Council on Ethics for the Norwegian Government Pension Fund Global, FTSE4Good, The Forum for Sustainable and Responsible Investment, EIRIS (Ethical Investment Research and Information Service), UKSIF (UK Sustainable Investment and Finance Association), Church of England Ethical Investment Advisory Service, Calvert Social Investments, Domini Social Investments, CALPERS, TIAA (formerly TIAA-CREF), SumOfUs
- **Leading business schools** including INSEAD, Mannheim Business School, Harvard Business School, Stanford Business School, London Business School, New York University Stern School of Business, Wharton
- **Consumer organizations and publications**, including those which advocate boycotts

#### **ANNEX: Short bio, Christopher Avery**

Chris Avery was the founding Director (2002-2013) of the non-profit Business & Human Rights Resource Centre, headquartered in London with an office in New York City. Mary Robinson (formerly President of Ireland and United Nations High Commissioner for Human Rights) chaired the Resource Centre's International Advisory Network. Today 40 staff and regional researchers based in 18 countries work for the organization. In 2013 Ford Foundation announced that it would give \$6.25 million in grants "to seven leading human rights organizations [including Business & Human Rights Resource Centre] that will strengthen and diversify the global human rights movement and enable it to confront the abuses that continue to violate the dignity and lives of the most vulnerable". In announcing the award, Ford Foundation said of the Resource Centre:

*"Business and Human Rights Resource Centre has become the main global source of information on business and human rights, enabling it to help shape and move forward this important new field of human rights work. The Resource Centre draws attention to the human rights impact of more than 5,000 companies worldwide, with a focus on transparency and accountability. The Resource Centre supports local NGOs and community groups by giving prominence to their concerns and seeking responses from companies, playing an important bridge-builder role and often fostering real improvements on the ground."*

The Resource Centre was recipient of the sixth Thomas J. Dodd Prize in International Justice and Human Rights in 2013, awarded by the University of Connecticut to recognize *"individuals or groups who have made significant efforts to advance the cause of international justice and global human rights"*.

From 1983 to 1995 Chris worked at the International Secretariat of Amnesty International in London, first as Legal Adviser, then as Deputy Head of the 130-member Research Department. His work at Amnesty included representing the organization at the United Nations in Geneva, participating in research missions and trial observations, ensuring the quality of country research, and serving as a member of the Senior Management Group.

After leaving Amnesty, Chris conducted independent field research on the extent to which companies were contributing to development and human rights in India, the Philippines, South Africa and Thailand. In 1999 and 2000 he met with several companies to assist them in drafting their first human rights policies.

In 1977-78 Chris was a National Director of NCAA Volunteers for Youth, a program sponsored by the National Collegiate Athletic Association involving college athletes across the United States serving as "big brothers" and "big sisters" to junior high students having problems at school or at home.

When Chris retired in 2013 he moved to Santa Fe, New Mexico, where he is setting up a private foundation which will give an annual award, accompanied by a monetary grant, to recognize "outstanding work by human rights defenders in the Global South or former Soviet Union addressing the human rights impacts of business".

Chris was educated at Columbia University School of Law (LLM); University of California, Davis, School of Law (JD, Order of the Coif, Corpus Juris Secundum Award); and Stanford University (BA History, Honors, Weter Prize). His publications include "Business and Human Rights in a time of change" (*Amnesty International*, 2000) and "Refugee Status Decision-Making: The Systems of Ten Countries" (*Stanford Journal of International Law*, Oct 1984).